IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/10/2003

Coram

The Honourable Mr.Justice V.KANAGARAJ

S.A.NO.652 OF 1999

1. Nagaraj
2. Lingammal ..Appellants

-Vs-

1. C.P.Munikrishnappa
2. Ramakrishnappa
3. Gowramma Wife of late
Chinnapillappa Gowdu
4. Subramani
5. Minor Gangadharan
6. Minor Muni Nagamma
7. Minor Anithamma

Respondents 5 to 7 are
minors rep.by their mother
and guardian Gowrammal
3rd respondent. .. Respondents

Second Appeal preferred against the decree and judgment of the Court of the Subordinate Judge, Hosur made in A.S.No.15 of 1996, dated 21.09.1998, confirming the decree and judgment of the Court of the District Munsif, Hosur, made in O.S.No.238 of 1985 dated 12.3.1995.

!For Appellants : Mr.M.V.Krishnan

^For Respondents : Mr.V.Raghavachari for R1, R2

:JUDGMENT

This second appeal is preferred against the judgment and decree of the Court of the Subordinate Judge, Hosur made in A.S.No.15 of 1996 dated 21.09.1998, confirming the decree and judgment of the District Munsif, Hosur, made in O.S.No.238 of 1995 dated 12.12.1995.

2. Tracing the history of the above second appeal coming to be preferred by the defendants in the suit, it comes to be known that the respondents herein filed the suit for title over the suit property and for permanent injunction and mandatory injunction, on averments such as that the

suit property originally belongs to Poojari Muniappa's son Thandavappa - 1 and his sons Muniappa - 2 and Bodappa - 3; that one Krishnaiah @ Chinnayyappa bought the said suit property on 20.06.1 960 from Thandavappa and his sons; that the first plaintiff bought the suit property from the said Krishnaiah @ Chinnappiah's wife Jayalakshmi on 16.12.1974 through a registered sale deed; that the first defendant is the son of Muniappa; that Bodappa is his uncle and that Thandavappa is his grandfather; that the second defendant is the wife of the first defendant; that from the date on which the suit property was bought by the plaintiffs, they are in possession of the said property; that the suit property is in village natham, no kist has been paid; that the defendants on 19.05.1985 trespassed into the suit property and tried to put up a foundation stone; that the plaintiff who filed the suit died pending the suit, left behind 2 to 8 legal heirs; that the defendants put up a tharchat building in the suit property; and hence the suit filed for the above said reliefs.

3.On the contrary, the defendants in their written statement would state that the plaintiffs or their ancestors have no right or title over the suit property; that from 1996 onwards the suit property is with the defendants' undisturbed possession; that the defendants have not denied the relationship stated in the suit averment; that the registered sale deeds executed on 20.06.1960 and 16.12.1974 are not genuine; that the thached building said to have been put up in the suit property is within the defendants' property; that the suit property belongs to their ancestors and not the plaintiffs. On such aversments, the defendants would pray to dismiss the suit.

4.On such pleadings, the lower Court having framed the following issues for determination of the questions involved in the suit viz., 1.Whether the plaintiffs are entitled to get right over the suit property?

2.Whether the defendants' ancestors are in undisturbed possession and enjoyment over the suit property from 1896 onwards is true?

3.Whether the plaintiffs are entitled to vacate the defendants from the tarchaed building and get the possession from the defendants?

4.Whether the plaintiffs' permanent injunction against the defendants over the suit property is maintainable?

5.To what reliefs the parties are entitled to?

had allowed the parties to record their evidence, and the plaintiffs on their side would examine Munikrishnan, Lakshmiah and Gopalliah as P.Ws.1, 2 and 3 for oral evidence and would mark two documents as Exs.A1 and A2 in support of their case, for documentary evidence. On the part of the defendants, in all, three witnesses have been examined as D.W.1 to D.W.3 for oral evidence and would mark 7 documents as Exs.B1 to B7 in support of their case, for documentary evidence.

5.Learned District Munsif, Hosur, having traced the facts of the case

as placed by the parties, having framed the issues brought forth above and having appreciated the same in evidence issue wise, had ultimately allowed the suit with costs thus passing the decree in favour of the plaintiffs.
Aggrieved by the said judgment, the defendants have preferred an appeal in A.S.No.15 of 1996 before the Court of Subordinate Judge, Hosur and the said Court also tracing the facts as pleaded before the trial Court and framing the points as below:

1.Whether the plaintiffs are entitled to get the suit property?
2.Whether the claim that the defendants and their ancestors are in possession over the suit property from 1896 onwards is true?

3.Whether the plaintiffs are entitled to mandatory injunction?
4.Whether the appeal is maintainable; and

appreciating the oral and documentary evidence placed on record would find that the contentions raised by the defendants in view of the PW1 to PW.3's oral evidence are not true, and not sustainable on the basis of the documents; that the plaintiffs' right over the suit property has been very clearly proved and would dismiss the Appeal Suit thereby confirming the Decree and judgment of the trial Court and would declare that the suit properties are belonging to the plaintiffs and would direct the defendants to vacate the suit property within two months and hand over vacant possession to the plaintiffs failing which, the plaintiffs are entitled to get the relief through Court, with costs.

6. It is only against these judgments and decrees delivered by the Courts below in the manner aforementioned, the defendants in the suit, who are the appellants before the appellate Court, have come forward to prefer the above second appeal for determination the following substantial question of law:
Whether the Court below ought not to have followed the rulings reported in AIR 1997 Mad 173 and AIR 1981 Mad 220 and whether the plaintiffs were entitled to the decree for mandatory injunction?

7. Regarding the facts the case of the appellants herein is that they put up the building long before the suit but only the ground they have not taken possession of.In this regard, during the arguments, the learned counsel appearing on behalf of the appellants would submit that the suit property is in an extent of 120 sq.ft. as vacant land that under Ex.A.2 dated 28.6.1960 Krishniah alias Chinna Appiah is said to have purchased the suit properties from Thandavappa and sons for a valid consideration of Rs.300/- from whom the wife of Chinna Appiah, namely Jayalakshmi is said to have purchased the same by a registered sale deed dated 16.12.1974 for a sale consideration of Rs.800/- which are the only two documents marked on the part of the plaintiffs whereas the suit has been filed for declaration of the title to the plaintiffs and for mandatory injunction to remove the construction put up in the suit property by the defendants. The second defendant is the wife of the first defendant who died pending suit, as a result of which, her sons and daughters were brought on record later; that the suit property measures East-West 14 ft and North-South 9 ft. to an extent of 126 sq ft; that it originally belonged

to one Thandavappa and his sons Muniappa and Kuttappa; that Ex.A.1 sale deed has been executed by Thandavappa and his sons; that the vendors are the grand parents of the defendants; the trial Court decreed the suit for title on the basis of Ex.A.2 sale deed but the trial Court did not give permanent injunction to the plaintiffs, as stated in the trial Court judgment in paragraph 13, granted interim injunction to remove the building put up by the defendants and to demolish the same.At this juncture, the learned counsel referring to paragraph 12 of the trial Court judgment would cite the extracted portion of the judgment reported in AIR 1981, Mad 220 wherein it is contemplated that:
"The plaintiff, who resided about a mile away from the suit property would have come to know about the defendant putting up construction on a major portion of the suit property if he had cared to find out and since he had not done so and kept quiet until the defendant had completed his construction and had sent the notice only about 7 or 8 months later, asserting his right to the suit property, the principles of acquiescence had to be made applicable to the facts of the case and the plaintiff had to be given only a decree for compensation in respect of the property, namely, the market value of the suit property in lieu of the relief of recovery of vacant possession of the property".

The learned counsel would point out that the appellant relies only on the substantial question of law as framed here before. On such arguments, the learned counsel for the appellants would seek to the relief sought for.

8. On the contrary, the learned counsel appearing on behalf of the respondents, would submit that originally the suit was filed only for the relief of declaration of title and permanent injunction and since the defendants trespassed into the suit property pending suit and put up the huts and took a different stand. The plaintiffs were necessitated to pray for mandatory injunction also and therefore the defendants are not entitled to the benefit of dictum of law declared in the judgment cited in AIR 1981 Mad. 220 or even the principles laid in the judgment in AIR 1997 Mad.172 that the suit property was an out right purchase exclusively under Ex.A1 & A2, thus, ultimately, the plaintiffs becoming entitled to the suit properties in its entirety; that the other side admitted the sale deed that they are bona fide documents and the defendants failed to prove bonafide possession; that it is false to allege that huts put up by the defendants were already there in the suit properties even prior to the suit and regarding the claim of the equity, the learned counsel would cite a judgment reported in AIR 1965 SC 1049 (Daya Ram Vs. Shyam Sundari) wherein it is held that virtually it would be seen that the equity pleaded is based on the principle underlying S.51 of the 'Transfer of Property Act, and as we have seen, the argument calling in aid of this provision of law had been urged before the High Court in the appeal against the decree in suit 20 of 1922 and had been rejected for the reason we have extracted earlier, and these reasons clearly negative all bona fides in the construction of these buildings. In these circumstances we consider that the learned Judges were justified in treating the acts of Mata Din as those of a trespasser who, with notice of the claim of the true owner, had effected constructions on the property. It is obvious that in those circumstances he could claim no special equity based upon his having bona fide put common

property to use and effect improvements on it. We consider therefore, that the decree passed by the High Court is not open to objection and the appeal has accordingly to fail".

9.In another Judgment reported in 1979 1 MLJ 380 (Duraisami Mudaliar Vs. Ramasami Chettiar) the learned Single Judge of this Court has held regarding the removal of superstructure put up by the defendant during pendency of the suit or after decree competence of executing Court to order removal or demolition has been decided in the following manner:

"Where a Court directs by a decree or order that vacant possession of land should be given, that decree could be made effective by directing its own officer to remove the superstructure on it, and to deliver vacant possession of the property to the decree-holder. It might not be necessary to have any specific power is that behalf, and such a power was exercised in every case in which vacant possession was ordered. The power to remove the superstructures on the land was an incidental power necessary and ancillary to the power to deliver possession of the property. Should there be any obstruction within the meaning of Order 21 Rule 97 of the Code of Civil Procedure, that has got to be dealt with specifically under the said provisions.

There will not be any difficulty with reference to a case where the superstructure came to be put up by the defendant either during the pendency of the suit or after the decree. In such a case, in execution of the decree for possession, the executing Court could order the removal or demolition of the construction made during the pendency of the suit or after the decree".

10.In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, since based on the facts pleaded, the circumstances brought forth and legalities argued it has been ultimately and concurrently decided by the trial Court and the first appellate Court to the effect that the defendant has only put up the superstructure alleged to have been in existence on the suit land has been shown only after the institution of the suit and therefore the plaint has to be amended and mandatory injunction has to be prayed for on the part of the plaintiff and therefore the defendants are not entitled to the benefit of the dictum of law declared in Judgment reported in AIR1981 Mad. 220 or even the principles laid down in the Judgment cited in AIR 1997 Madras 172. Since the suit property is an out right purchase exclusively under Exs.A1 and A2, ultimately the plaintiffs become entitled to the suit properties in their entirety. The conclusions arrived at by passing the decree and judgment by the trial court in favour of the plaintiff and as against the defendant therein and the appellate court in dismissing the appeal preferred by the defendant and confirming the trial court judgment is quite on the expected line and this Court does not find that both the courts below in passing the decree and Judgment in the manner aforementioned, have committed any error apparent on the face of the records or has any inconsistency or infirmity has crept into the judgments and decrees passed by the lower courts so as to make this court to cause its interference into the same and hence the only conclusion that this Court could arrive at in the circumstances mentioned

above, particularly in the context of the substantial question of law framed is that the rulings reported in 1997 Madras 173 and AIR 1981 Madras 200 are not applicable to the facts of the case in hand and hence the plaintiffs are entitled to the decree for mandatory injunction, thus answering the substantial question of law in this manner.

In result,
(i)The above second appeal fails and the same is dismissed.
(ii)The Judgment and decree dated 21.9.1998 made in A.S.No.15 of 1996 by the Subordinate Judge, Hosur thereby confirming the Judgment and decree dated 12.3.1995 made in O.S.No.23 8 of 1985 by the Court of District Munsif, Hosur is hereby confirmed.
(iii) However, in the circumstances of the case, there shall be no order as to costs.

MSK/ASVM/VJY

To

1.The Subordinate Judge, Hosur
2.The District Munsif,Hosur.